

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In The Matter of -----

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate the
Implementation of Feed-In Tariffs

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DOCKET NO. 2008-0273

**MEMORANDUM IN OPPOSITION TO MOTION OF ZERO EMISSIONS
LEASING LLC TO COMPEL HAWAIIAN ELECTRIC COMPANIES TO
PROVIDE RESPONSES TO INFORMATION REQUESTS**

AND

CERTIFICATE OF SERVICE

PUBLIC UTILITIES
COMMISSION

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**MEMORANDUM IN OPPOSITION TO MOTION OF ZERO EMISSIONS
LEASING LLC TO COMPEL HAWAIIAN ELECTRIC COMPANIES TO
PROVIDE RESPONSES TO INFORMATION REQUESTS**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("Hawaiian Electric"), MAUI ELECTRIC COMPANY, LIMITED ("MECO") and HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO") (collectively "Hawaiian Electric Companies" or "Companies") in opposition to the Motion of Zero Emissions Leasing LLC to Compel Hawaiian Electric Companies to Provide Responses to Information Requests ("Motion to Compel") dated March 8, 2010.¹

The Hawaiian Electric Companies oppose Zero Emissions Leasing LLC's ("Zero Emissions") Motion to Compel on the following grounds and respectfully submit that for these reasons, the Motion to Compel should be denied.

¹ The Memorandum is submitted pursuant to Section 6-61-41 of the Rules of Practice and Procedure of the Commission, Title 6, Chapter 61 of the Hawaii Administrative Rules.

I. RELEVANT PROCEDURAL HISTORY

On February 16, 2010, the Hawaiian Electric Companies received a total of 98 information requests from the parties to this proceeding regarding the Companies' proposed Queuing and Interconnection Procedures and Reliability Standards.² Including subparts there were over 231 separate requests for information which the Hawaiian Electric Companies were required to respond to.

On February 23, 2010, after extensive discussions and correspondence between the parties, the parties, including Zero Emissions, submitted for the Commission's consideration two requests for extensions of time.³ In the first, the Hawaiian Electric Companies requested an extension of time of less than one week, until March 1, 2010, for parties to respond to the February 16, 2010 information requests. In the second, certain parties, including Zero Emissions, requested extensions of time for the parties to submit comments on proposed Queuing and Interconnection Procedures until March 8, 2010, and for the parties to submit comments on proposed Reliability Standards until March 23, 2010.⁴

As a part of the requests for extension of time, the parties expressly noted that in the event the responses to information requests did not provide the parties with the information required, the parties had separately agreed to an informal round of supplemental information requests and responses which could be

² The Companies' Report on Queuing and Interconnection Procedures was filed with the Commission on February 1, 2010. The Companies' Report on Reliability Standards was filed with the Commission on February 8, 2010.

³ The requests for extension of time were from an earlier request for limited extension of time by the Hawaiian Electric Companies which was granted by the Commission by letter on February 17, 2010.

⁴ This included an understanding that comments on the Hawaiian Electric Companies' Reliability Standards Working Group proposal would be submitted by March 15, 2010.

incorporated as part of the various comments to be filed by the parties.

(February 23, 2010 Letter to the Commission at footnote 2)

The February 23, 2010 letter confirmed that the active parties to the proceeding (listed in the letter), including Zero Emissions, either supported or did not object to each of the requests for extension of time set forth in the letter.⁵ On March 1, 2010, the Hawaiian Electric Companies submitted their responses to each of the 98 information requests, including Zero Emissions' ZE-IR-107. On March 4, 2010, pursuant to the agreement noted in the February 23, 2010 correspondence to the Commission, a number of the active-parties submitted supplemental information requests to the Companies. The Companies responded to those supplemental information requests on March 11, 2010.

Zero Emissions did not submit any supplemental information requests to the Companies. At no time during this supplemental and informal discovery period did Zero Emissions contact the Hawaiian Electric Companies to seek any additional information. On March 8, 2010, Zero Emissions filed the instant Motion to Compel.

II. DISCUSSION

A. The Motion To Compel Should Be Denied As Contrary To The Requirements of Rule 37(a)(2), Hawaii Rules Of Civil Procedure.

In a recent Order, the Commission discussed a Motion to Compel Responses to Information Requests made by Life of the Land.⁶ The Commission

⁵ On March 12, 2010 the Commission granted the parties' February 23, 2010 requests for extension of time.

⁶ *In the Matter of Public Utilities Commission*, Docket No. 03-0371 ("Docket No. 03-0371"), Order No. 21112 (July 12, 2004) ("Order No. 21112")

stated that Rule 37(a)(2) of the Hawaii Rules of Civil Procedure specifies that a motion for an order compelling an answer “must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action.”⁷ (Order No. 21112 at 2) (quotations in original) Upon review, the Commission found that Life of the Land’s Motion to Compel should be denied because the Motion to Compel “did not include the certification required by HRCP 37(a)(2)” and “Life of the Land has not convinced the commission that it has in good faith conferred or attempted to confer ... to secure the necessary information ... without commission action.” (Id.)

Similar facts are present here and warrant the denial of Zero Emission’s Motion to Compel. Indeed, based upon the Commission’s general directive that the Commission expects parties and participants to attempt to work out their discovery differences among themselves first and seek the Commission’s assistance only as a last resort, the case for denial is even stronger here.⁸

First, as with the Docket No. 03-0371, Zero Emission’s Motion to Compel does not include any type of certification or even a passing reference to a good faith effort by Zero Emissions to confer or attempt to confer with the Hawaiian Electric Companies to secure the information requested without Commission action.

⁷ The Commission noted that whenever the Hawaii Administrative Rules, Title 6, Chapter 61, is silent on a matter, the Commission may refer to the HRCP for guidance. (Order No. 21112 at footnote 2)

⁸ Order No. 21112 at footnote 4.

Second, in Order No. 21112, the Commission referenced the fact that Life of the Land filed its motion to compel just 5 days prior to a scheduled technical meeting where the Parties and Participants could have easily clarified their responses to Information Requests.⁹ Here, Zero Emissions filed its Motion to Compel in the midst of a supplemental information request process which the parties availed themselves of and which Zero Emissions agreed to or at the very least did not object to.

Zero Emissions had ample opportunities to confer with the Hawaiian Electric Companies either through the submission of supplemental information requests, or direct communications with the Companies in an effort to resolve this issue. Instead, the first that the Hawaiian Electric Companies heard of Zero Emission's issue with the response to ZE-IR-107 was through the Motion to Compel. Zero Emissions failed to comply with the standard adopted by the Commission through Order No. 21112 and accordingly, the Motion to Compel should be denied.

B. The Hawaiian Electric Companies Responded To Zero Emission's Information Request.

Zero Emission's Motion to Compel concerns only two of four subparts of ZE-IR-107, ZE-IR-107, parts (c) and (d). Stated another way, Zero Emission's Motion to Compel concerns only two of 231 separate information requests which the Hawaiian Electric Companies responded to on March 1, 2010. Contrary to Zero Emission's contention, the Hawaiian Electric Companies responded fully to

⁹ Order No. 21112 at footnote 3.

ZE-IR-107, parts (c) and (d) and therefore, there is no basis for the Motion to Compel.¹⁰

As demonstrated by the Companies' responses to each part of ZE-IR-107 (set forth as Attachment C to the Motion to Compel), the Companies provided detailed responses for each utility.

Subpart (a)

Subpart (a) to ZE-IR-107 requested that the Hawaiian Electric Companies:

- (a) *identify, by name, generation type and generating capacity, all generating facilities from which the delivery of electricity to the utility electric system can be reduced or curtailed by the utility during a 24-hour period;*

Because the information request asks for information which is utility specific, Hawaiian Electric, HELCO and MECO each provided a separate response.

Hawaiian Electric provided a two-page table which identifies by name, generation type and generating capacity those generating facilities, both utility and non-utility, that deliver electricity to the Hawaiian Electric grid on Oahu. (Hawaiian Electric response to ZE-IR-107 at pages 5-6) The response also identifies which units are peaking, cycling and baseload and provides a detailed discussion regarding how these units are operated including the extent to which output from the units may be reduced or curtailed. (Hawaiian Electric response to ZE-IR-107 at pages 1-3)

HELCO provided a detailed response which explained that on the HELCO system, delivery of electricity to the system at all generating facilities can be

¹⁰ Although it is the position of the Hawaiian Electric Companies that ZE-IR-107, parts (c) and (d) have been responded to, the Hawaiian Electric Companies remain open to working with the parties on these important technical issues in the context of the FIT proceeding including the Companies' proposed Reliability Standards Working Group as discussed in more detail in the Companies' February 26, 2010 correspondence to the Commission.

reduced or curtailed by the utility to ensure the reliable operation of the HELCO system. HELCO identified the generating facilities that could be subject to curtailment for excess energy on the HELCO system. HELCO also explained that the specific facilities which would be curtailed would be dependent upon operating conditions such as system demand, production from various suppliers, derations, and events such as maintenance outages. (HELCO response to ZE-IR-107 at pages 1-2) MECO also identified each generating facility, generation type and the nominal capacity of the generating units that can be reduced or curtailed by MECO during a 24-hour period. (MECO response to ZE-IR-107 at page 1)

Subpart (b)

Subpart (b) to ZE-IR-107 requested that the Hawaiian Electric Companies:

(b) please state the order in which delivery of electricity from the generating facilities identified in you [sic] response to part (a) can be or is reduced or curtailed by the utility during a 24-hour period;

Hawaiian Electric responded that the order in which generation at each facility is reduced by the utility is determined by economic dispatch so that the unit with the largest incremental cost is reduced first with other units following in sequence until such time that the output of the generating units match the load at that time and the required spinning reserves are met. Hawaiian Electric also clarified that the amount of output that these units can be reduced is based on several factors including but not limited to, the system load, generating units on maintenance, forced outage conditions, and temporary derates of generating units. Other as-available resources such as net energy metering photovoltaic

units that are not under Hawaiian Electric dispatch control could also impact the amount of load to be served. Because there may be several different combinations of these factors, which factors change constantly, Hawaiian Electric stated that it is not able to provide the amounts by which energy can be curtailed during a 24 hour period.

HELCO clarified that the information request is with regard to excess energy curtailment as curtailment for other reasons (e.g. emergency conditions), are not subject to an order of curtailment. HELCO also referred Zero Emissions to Attachment 4 of the Companies' Report on Reliability Standards which was filed with the Commission on February 8, 2010, for a discussion of the principles by which system energy is curtailed. HELCO then provided a detailed description of its operational curtailment policy for excess energy curtailment, by unit, as of the date of the response to the information request. (HELCO response to ZE-IR-107 at 3-6) MECO also specified the order in which delivery of electricity from the generating facilities on Maui, Molokai and Lanai could be reduced or curtailed by the utility during a 24-hour period for excess energy conditions. (MECO response to ZE-IR-107 at page 3)

Subparts (c) and (d)

Subpart (c) to ZE-IR-107 requested that:

- (c) *for each of the generating facilities identified in your response to part (a), please state:*
 - (i) *the amount, in kilowatt-hours of electricity, by which deliveries of electricity from that generating facility to the utility electric system can be reduced or curtailed by the utility during a 24-hour period; and*

- (ii) *the amount, in kilowatt-hours of electricity, by which deliveries of electricity from that generating facility to the utility electric system are currently being reduced or curtailed during a 24-hour period.*

In response to this information request, Hawaiian Electric referenced its detailed response to subpart (b) of ZEL-IR-107 where the Company explained that the amount of output that can be reduced is based on several factors including but not limited to, the system load, generating units on maintenance, forced outage conditions, and temporary derates of generating units. In its response, Hawaiian Electric made clear that because there may be several different combinations of these factors, which factors change constantly, Hawaiian Electric is not able to provide the amounts by which energy can be curtailed during a 24 hour period. (Hawaiian Electric response to ZEL-IR-107 at page 4) HELCO also referenced its detailed response regarding curtailment policy and the different factors which could impact the level of curtailment of a particular facility on a moment-to-moment basis explaining that HELCO does not maintain a record of curtailed energy. (HELCO response to ZE-IR-107 at 6) MECO indicated that the amount of electricity being curtailed or reduced in a 24-hour period varies depending upon system load, the units which are available to the system at any given point in time, and both regulating reserve requirements and the output from as-available units; and that MECO also does not maintain a record of the amount of kWhs that have been or are curtailed from a facility. (MECO response to ZE-IR-107 at pages 3-4)

In short, the amount by which deliveries of electricity from a particular generating facility to a particular electrical system, can be reduced or curtailed varies based upon the system condition at the point in time that this evaluation is

sought. Accordingly, there is no single number that could be provided in response to this information request that would be accurate. At best, Zero Emission's information request seeks a number that would require speculation and any attempt at a precise response would also be speculative.

Subpart (d) to ZE-IR-107 requested that:

(d) for each of the generating facilities identified in your response to part (a) that does not generate electricity from hydropower, solar radiation, wind, geothermal, biogas, or biomass (a "non-renewable generating facility"), please state how much electricity generation, in kilowatt-hours of electricity, from the following types of generating facilities:

- (i) in-line hydropower generating facilities*
- (ii) photovoltaic generating facilities*
- (iii) concentrating solar generating facilities, or*
- (iv) onshore wind generating facilities*

Considering each such type in the aggregate, could be added or delivered to the utility electric system, without compromising the reliability of the utility electric system, by displacing reducing or curtailing electricity generation from such nonrenewable generating facility.

Stated plainly, the information request appears to ask how much additional renewable energy could be integrated onto each utility system based upon the curtailment of or reduction in generation from non-renewable facilities. As discussed above, the level of curtailment of any particular generating unit varies over time based upon the particular system conditions present at the time the curtailment evaluation was undertaken. Accordingly, basing any decision to add one type of resource based upon an assumed level of curtailment of another type of resource would be speculative and inconsistent with preserving the reliability of the utility electric system. Similarly, the use of historical system information without consideration of reasonably anticipated system additions or operational

conditions, is also inconsistent with a meaningful assessment of system reliability.

Consistent with this, Hawaiian Electric referenced its earlier detailed discussion of curtailment and reduction in facility output in response to the information request. (Hawaiian Electric response to ZE-IR-107 at 4) In order to ensure that any particular resource would not contribute to the reliability issues from distributed and variable generation (as discussed in Attachments 2 and 3 to the Companies' Reliability Standards Report) HELCO discussed that an appropriate analysis would have to be done to assess the impact of the additional resources including definition of the requirements and/or measures to responsibly accept such resources onto the system. (HELCO response to ZE-IR-107 at page 4) Finally, MECO, reiterated that it is difficult to provide a response to the information request due to the dynamic nature of an electrical system and the combinations of factors that influence the ability of an electrical system to integrate renewable generation without compromising the reliability of the electric system, which factors include but are not limited to: system load, the types of firm generation available, the system's regulating reserve requirements, the level of power output from as-available generation and the volatility of the as-available renewable generation on-line. MECO also confirmed that it is the practice of the utility to lower non-renewable facilities to their minimum outputs (respecting contractual provisions) prior to curtailing any as-available facilities. (MECO response to ZE-IR-107 at 5)

In summary, the Hawaiian Electric Companies provided comprehensive and detailed responses to ZE-IR-107 and therefore, there is no basis for Zero Emission's Motion to Compel.

C. The Motion To Compel Should Be Denied Because It Will Not Add Meaningfully To The Record In This Proceeding.

The Motion to Compel poses two relevant questions: (1) how much as-available renewable energy could be added to the grid of each island without compromising electric system reliability; and (2) how much of this as-available renewable energy should the utility be obligated to purchase based on the relative costs and benefits of the added as-available renewable energy. (Motion to Compel at 4-5) Unfortunately, ZE-IR-107 will not answer those questions. ZE-IR-107 asks for two types of information – information on units which can presently be curtailed and the utilities' curtailment policies (which is not a subject of the Motion to Compel); and information regarding how these units would be curtailed in the future which would be speculative. The hypothetical information sought by ZE-IR-107 parts (c) and (d) would not add meaningfully to the record in this proceeding and for this reason as well, the Motion to Compel should be denied.

Although ZE-IR-107 will not provide answers to the questions posed by Zero Emissions, the Hawaiian Electric Companies respectfully submit that a comprehensive and transparent stakeholder process, to conduct the appropriate studies needed and employ the mitigation measures identified, will. The details of such a process are set forth in the Hawaiian Electric Companies' proposal for

a Reliability Standards Working Group submitted to the Commission on February 26, 2010.

Dated: Honolulu, Hawaii, March 15, 2010

A handwritten signature in black ink, appearing to read "Rod S. Aoki", written over a horizontal line.

Rod S. Aoki

Attorney for the Hawaiian Electric Companies

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing
MEMORANDUM IN OPPOSITION TO MOTION OF ZERO EMISSIONS LEASING
LLC TO COMPEL HAWAIIAN ELECTRIC COMPANIES TO PROVIDE
RESPONSES TO INFORMATION REQUESTS, together with this Certificate of
Service, as indicated below by hand delivery and/or by electronic mail to the following:

DEAN NISHINA
EXECUTIVE DIRECTOR
DEPT OF COMMERCE & CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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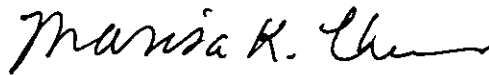
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DATED: Honolulu, Hawaii, March 15, 2010



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